

Internal Revenue Service

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PLR-153410-09

Date:

May 19, 2010

LEGEND

Foreign Parent =

FSub =

U.S. Parent =

Seller =

Target =

Buyer =

Sub 1 =

PLR-153410-09

2

Sub 1 LLC =

New Sub 1 LLC =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

Business A =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Date A =

Date B =

Date C =

Date D =

Dear :

This letter responds to your December 7, 2009 request, submitted by your authorized representative, for rulings on certain federal income tax consequences of the Proposed Transactions (described below). The information provided in that request and in later correspondence is summarized below.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

STATEMENT OF FACTS

Foreign Parent owned all of the stock of FSub, which owned all of the stock of U.S. Parent. U.S. Parent is the common parent of a U.S. consolidated group (the "U.S. Parent Group") that is engaged in Business A. U.S. Parent owns all of the issued and outstanding member interests of Seller, a single-member limited liability company. Seller owns all of the issued and outstanding stock of Buyer.

COMPLETED TRANSACTIONS

In Year 1, Seller, which was a corporation wholly owned by Foreign Parent at such time, acquired Target in a forward subsidiary merger pursuant to which Target merged with and into Seller with Seller surviving. Seller treated the merger as a reorganization under section 368(a)(1)(A) by reason of section 368(a)(2)(D). Target was the former common parent of the Target consolidated group, which included Sub 1 through Sub 7. At the time of Target's acquisition, Seller was the common parent of the taxpayer's consolidated group, and, as a result of Target's acquisition, Sub 1 through Sub 7 became members of Seller's consolidated group.

As a result of the Target acquisition, Seller obtained a carryover basis in Target's assets, which included the stock of Sub 1 through Sub 7. As part of the plan of reorganization, Seller contributed Target's assets, including the stock of Sub 1 through Sub 7, to Buyer in exchange for notes and Buyer's assumption of the liabilities associated with Target's business. The value of the Target assets exceeded the principal amount of the notes plus the assumed liabilities, and Seller treated the exchange as a section 351 transfer with the notes constituting "other property" within the meaning of section 351(b) (the "Intercompany Gain Transaction"). Accordingly, Seller recognized gain at the time of the exchange but, pursuant to Treas. Reg. § 1.1502-13, did not take such gain into account (the "Seller Intercompany Gain").

In Year 2, Foreign Parent contributed all of the shares of Seller to FSub. In Year 3, FSub contributed all of the shares of Seller to U.S. Parent. The contribution of Seller's stock to U.S. Parent was treated as a reverse acquisition transaction under Treas. Reg. § 1.1502-75(d)(3). As a result, Seller's consolidated group continued with U.S. Parent as the common parent (for ease of reference, "U.S. Parent Group" includes consolidated return years in which Seller was the common parent of the group).

In Year 4, Sub 1 converted to Sub 1 LLC, a single-member limited liability company that was disregarded as an entity separate from its owner, Buyer (the "Sub 1 Conversion"). After the conversion, Sub 8, which prior to the conversion was a wholly owned subsidiary of Sub 1, merged with and into Buyer (the "Sub 8 Merger"). At the time of the Sub 1 Conversion, U.S. Parent was unaware of the potential implications that the conversion could have under Treas. Reg. § 1.1502-13 with respect to the portion of the Seller Intercompany Gain attributable to the shares of Sub 1. Promptly upon identifying the potential triggering event, U.S. Parent requested relief under Treas. Reg. § 301.9100-1 for an extension of time to make an effective election under Treas. Reg. § 1.1502-13(f)(5)(ii) and to effectuate the transfer of assets to a new member pursuant to Treas. Reg. § 1.1502-13(f)(5)(ii)(B). The Service granted relief under section 9100 on Date A (see PLR-127933-08). On Date B, New Sub 1 LLC was organized (the "New Sub 1 LLC Formation") and an initial election was filed to classify New Sub 1 LLC as an association taxable as a corporation for federal income tax purposes. In accordance with the section 9100 relief, Buyer contributed its interest in Sub 1 LLC to New Sub 1 LLC (New Sub 1 LLC together with Sub 2 through Sub 7 collectively referred to as "Target Subs"). Buyer retained the assets of Sub 8.

On Date C, Seller converted under state law to a single-member limited liability company ("Seller LLC") that is disregarded as an entity separate from its owner, U.S. Parent (the "Seller Conversion").

PROPOSED TRANSACTIONS

In order to simplify its corporate structure and reduce its compliance burden, U.S. Parent has proposed the following transactions (the “Proposed Transactions”) to take place on or before Date D:

- (i) Seller LLC will merge with and into U.S. Parent under state law with U.S. Parent surviving (the “Seller LLC Merger”).
- (ii) U.S. Parent will merge downstream with and into Buyer under state law with Buyer surviving (the “U.S. Parent Downstream Merger”).
- (iii) A check-the-box election will be made to classify New Sub 1 LLC as an entity disregarded as separate from its owner, Buyer, for U.S. federal income tax purposes (the “New Sub 1 LLC Check-the-Box Election”).
- (iv) Each of the Target Subs will either liquidate, convert to a disregarded LLC pursuant to state law, or merge into Buyer or a disregarded entity owned by Buyer (collectively, the “Target Sub Liquidations”).

REPRESENTATIONS

Completed Transactions

U.S. Parent makes the following representations with respect to the Completed Transactions, described above:

- (a) Appropriate adjustments will be made in accordance with Treas. Reg. § 1.1502-13(f)(5)(ii)(B)(2) to reflect Buyer’s retention of the Sub 8 assets.
- (b) The Seller Conversion qualified as a liquidation described in section 332.

Seller LLC Merger

U.S. Parent makes the following representations with respect to the Seller LLC Merger, described above in step (i):

- (c) Seller LLC will merge with and into U.S. Parent with U.S. Parent surviving. By operation of state law, the assets and liabilities of Seller LLC will be transferred to U.S. Parent and Seller LLC will cease its separate legal existence.

U.S. Parent Downstream Merger

U.S. Parent makes the following representations with respect to the U.S. Parent Downstream Merger, described above in step (ii):

- (d) The U.S. Parent Downstream Merger will qualify as a reorganization described in section 368(a)(1)(A).
- (e) Pursuant to Treas. Reg. § 1.1502-75(d)(2)(ii), the U.S. Parent Downstream Merger will not result in the termination of the U.S. Parent Group.
- (f) The U.S. Parent Downstream Merger will qualify as a “group structure change” under Treas. Reg. § 1.1502-33(f). The earnings and profits of Buyer will be adjusted immediately after Buyer becomes the new common parent to reflect an appropriate amount of the earnings and profits of U.S. Parent immediately before U.S. Parent ceases to be the common parent.

New Sub 1 LLC Check-the-Box Election

U.S. Parent makes the following representations with respect to the New Sub 1 LLC Check-the-Box Election, described above in step (iii):

- (g) The Sub 1 Conversion taken together with the New Sub 1 LLC Formation qualified as a reorganization described in section 368(a)(1)(F).

Target Sub Liquidations

U.S. Parent makes the following representations with respect to the Target Sub Liquidations, described above in step (iv):

- (h) Other than as described above, each share of the stock of each Target Sub that reflects intercompany gain from any of the Completed Transactions has been held by members of the U.S. Parent Group continuously since such gain arose and will be held by members of the U.S. Parent Group continuously until completion of the Proposed Transactions.
- (i) Each Target Sub Liquidation will qualify as a liquidation described in section 332.
- (j) Immediately before the Seller Intercompany Gain is taken into account pursuant to the Proposed Transactions, Buyer will be treated for federal income tax purposes as the owner of the Target Subs’ stock.

- (k) As a result of the Target Sub Liquidations, Buyer's basis in each of the Target Subs' stock that reflects the Seller Intercompany Gain that is taken into account will be eliminated without the recognition of gain or loss (and such eliminated basis will not be reflected in the basis of any successor asset).
- (l) The U.S. Parent Group has not and will not derive any federal income tax benefit (within the meaning of Temp. Treas. Reg. § 1.1502-13T(c)(6)(ii)(C)) from the Intercompany Gain Transaction that gave rise to intercompany gain or the redetermination of intercompany gain (including any adjustment to basis in member stock under Treas. Reg. § 1.1502-32). For purposes of this representation, U.S. Parent has taken into consideration any potential benefits associated with successor assets to the Seller Intercompany Gain.
- (m) The effects of the Intercompany Gain Transaction have not previously been reflected, directly or indirectly, on the U.S. Parent Group's consolidated return within the meaning of Temp. Treas. Reg. § 1.1502-13T(c)(6)(ii)(C).

RULINGS

Seller Conversion

Based solely on the information submitted and the representations set forth above, we rule as follows with respect to the Seller Conversion:

- (1) Following the Seller Conversion, U.S. Parent became a successor person and succeeded to Seller's intercompany items (including the Seller Intercompany Gain) within the meaning of Treas. Reg. § 1.1502-13(j)(2).
- (2) None of the Seller Intercompany Gain was required to be taken into account as a result of the Seller Conversion under the multiple trigger rule of Treas. Reg. § 1.1502-13(j)(3).

U.S. Parent Downstream Merger

Based solely on the information submitted and the representations set forth above, we rule as follows with respect to the U.S. Parent Downstream Merger:

- (3) Buyer will become a successor person and will succeed to U.S. Parent's intercompany items (including the Seller Intercompany Gain) under Treas. Reg. § 1.1502-13(j)(2).

- (4) None of the Seller Intercompany Gain will be required to be taken into account as a result of the U.S. Parent Downstream Merger under the multiple trigger rule of Treas. Reg. § 1.1502-13(j)(3).
- (5) Following the U.S. Parent Downstream Merger, Buyer will be the surviving common parent of the U.S. Parent Group for purposes of subsequently applying Temp. Treas. Reg. § 1.1502-13T.

New Sub 1 LLC Check-the-Box Election

Based solely on the information submitted and the representations set forth above, we rule as follows with respect to the New Sub 1 LLC Check-the-Box Election:

- (6) The membership interests of New Sub 1 LLC represent successor assets to the Seller Intercompany Gain attributable to the shares of Sub 1 pursuant to Treas. Reg. § 1.1502-13(j)(1).
- (7) The New Sub 1 LLC Check-the-Box Election will not affect PLR-127933-08, issued November 28, 2008 with respect to the section 9100 relief.

Target Sub Liquidations

Based solely on the information submitted and the representations set forth above, we rule as follows with respect to the Target Sub Liquidations:

- (8) The portion of the Seller Intercompany Gain attributable to the shares of the Target Subs will be excluded from Buyer's gross income pursuant to Temp. Treas. Reg. § 1.1502-13T following the Target Sub Liquidations.
- (9) Buyer's earnings and profits will not be adjusted by the amount of income excluded under Temp. Treas. Reg. § 1.1502-13T.

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the Proposed Transactions under other provisions of the Code or the regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transactions that are not specifically covered by the above rulings. Specifically, no opinion is expressed with respect to the portion of the Seller Intercompany Gain attributable to Target assets other than shares of the Target Subs.

PROCEDURAL STATEMENTS

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Gerald B. Fleming
Senior Technician Reviewer, Branch 2
Office of Associate Chief Counsel (Corporate)